

## REMARKS

This responds to the June 16, 2009 Final Office Action.

In the Office Action, claims 1-21 are noted as pending in the application, claims 1-21 stand rejected, no claims are objected to and no claims are allowed. No claims have been withdrawn from consideration. Claim 22 has been previously canceled.

## PRODUCT CLAIMS AND METHOD CLAIM

Applicant appreciates the indication that the product claims and the method claim are treated together. It is noted that the product claims and the method claim have different elements, and each claim stands independently of the others.

## REJECTIONS

### INDEFINITENESS

Claims 1-21 are rejected under 35 USC 112, second paragraph, as being allegedly indefinite. Claims 1 and 21 have been amended to recite the alternatives as a group, which should be more acceptable under Patent Office practice. No change is made to the scope of the claims.

### OBVIOUSNESS

Claims 1-20 are rejected under 35 USC 103(a) as being allegedly unpatentable over *Boyd* (6,688,081) in view of *Itzel* (7,793,475). The Office Action apparently asserts that *Boyd* fails to teach or suggest a concertina construction providing for the recited expansion and relies on *Itzel* for the missing construction/method. These rejections are respectfully traversed for the following reasons.

The Office Action relies on *Itzel* as allegedly disclosing a concertina construction within a sidewall, referring to FIGS. 2a, 4a and 5b. First, *Itzel* fails to teach or suggest an expandable side wall, a flexible material or a flexible balloon structure. Second, *Itzel* fails to teach a concertina construction, but instead teaches rigid threads 17, 22 for securing a cap 15 on the container. Nothing in the Office Action establishes that

threads are a concertina construction, or that such threads form any type of expandable side wall or flexible balloon structure. Applicant respectfully requests evidence of any definition or other established meaning stating that threads for a container cap are a concertina construction or that they form any type of expandable side wall or flexible balloon structure.

*Itzel* discloses a closure cap for a two-component packaging system. A cap (FIGS. 1-7), for example 15 in FIG. 3, is used to close a container. The closure cap is rotatable on the neck of the bottle, for example through engagement of the threads 17 or 22. See, for example, column 3, line 65, and column 6, lines 10-15. These structures are referred to in *Itzel* as threads and not as any structure or feature even approaching a concertina construction, let alone any type of expandable side wall or flexible balloon structure. Moreover, the Office Action not only omits any reference numerals, it also omits any identification of structure approaching a concertina construction. Therefore, *Itzel* is no better than *Boyd* in teaching or suggesting Applicant's claimed inventions.

It is noted that nothing in *Boyd* teaches or suggests any type of expandable side wall or flexible balloon structure. *Boyd* specifically states that the seal 56 is relatively stiff (column 7, lines 23-26), and the materials of each of the closures include metal or polymer. Additionally, in *Boyd*, the "seal" is a seal per se only when it actually creates a seal with the container, after which it is no longer movable as a seal. There is no movement of any of the alternative seals of *Boyd* following sealing of the container, and there is no expandable side wall or flexible balloon structure. This is clear, for example, at paragraph 7, lines 38 to 45, where it is stated that the method "...advances the scavenger closure headspace-displacing member 56 into the filled container 26 to cause gases in the headspace 30 (fig. 2) to vent through the clearance 50 and escape over the thread 14 before the scavenger closure 52 completely seals against the sealing surface 13 ... ." [Emphasis added.] Therefore, no seal is created in *Boyd* until the seal/closure is fully threaded onto the container and the seal is formed between the seal/closure and the sealing surface of the filled container 26. Movement of the seal/closure occurs only before sealing, and up until that time, headspace gas escapes

as the closure is threaded onto the container. Clearly, *Boyd* provides no teaching or suggestion for an expandable or movable seal, a seal where a wall includes an expandable side wall, a concertina wall, or other features described by Applicant.

There is, therefore, no disclosure or suggestion in *Boyd* that any of its "seals" 44, 56, 62, has the ability or intention to move when the closure is sealed on the container, for example when a heated fluid is inside the container, or any type of expandable side wall or flexible balloon structure.

It is respectfully requested that the next Office Action indicate what element of *Boyd* is an expandable side wall or flexible balloon structure.

The newly-referenced Chinese publication, CN 2341917Y, also fails to teach or suggest an expandable sidewall, a sidewall which has a concertina construction providing for expansion or a flexible balloon structure.

#### Applicant's Disclosure

Applicant's disclosure has been discussed previously and that discussion will not be repeated here.

#### Claims

Consider now the claims in the application.

Claim 1 is an independent apparatus claim and recites in part:

"a neck finish which includes an expandable and moveable seal, wherein the seal is configured to be expandable and moveable relative to the container when sealed thereto and when a heated liquid is in the container, said seal moving downwardly towards the base and within the neck finish to compensate for vacuum forces during cooling of the liquid following sealing of the container, wherein said seal is selected from the group of a flexible material housing with an expandable side wall, a flexible material housing with an expandable side wall which has a

concertina construction, and a flexible balloon structure which is able to expand within the neck finish."

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or at least one of a flexible material housing with an expandable side wall, a flexible material housing with an expandable side wall which has a concertina construction, and a flexible balloon structure which is able to expand within the neck finish. *Boyd* neither has flexible material or expandable side walls or moves when the closure is sealed. There is no disclosure or suggestion in *Boyd* that any of its closures 44, 56, 62, has the ability or intention to move following sealing of the container. Additionally, *Itzel* fails to teach or suggest a seal which is in any way expandable, or which is movable downwardly towards the base and within the neck finish to compensate for vacuum forces during cooling of the liquid following sealing of the container. None of the applied references teach or suggest singly or in combination expandable side walls or a flexible balloon structure. Clearly claim 1 is patentable over the references.

Claims 2-20 are dependent directly or indirectly from independent claim 1 and are asserted as being patentable for the same reasons as discussed with respect to claim 1, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note for example claim 3 reciting in part "wherein said seal is of said flexible material having an expandable side wall". Note also claim 4 reciting in part "said side wall has said concertina construction providing for its expansion". Claim 6 recites in part "said seal includes said side wall which can be physically moved relative to the neck finish and towards the liquid in the container". Claim 7 recites "the side wall includes a screw thread engageable with another screw thread provided for said neck finish or a cap thereof". Note also claim 10 reciting in part "a commodity is positioned within said secondary headspace". Claim 11 recites in part "said commodity is one of a tablet and a pill intended for mixing with the liquid before use". Note also claim 16 reciting in part "the seal is of said flexible balloon structure which is expands within the neck finish in compensating for vacuum pressure as the

liquid cools". Claim 17 recites in part "wherein said base inverts to provide a compression of the seal to move it within the neck finish towards the said opening and to pressurize a secondary headspace above said seal". Clearly these dependent claims are patentable over the applied art.

Claim 21 is an independent method claim and recites in part:

"heating the fluid at least one of before and after its introduction into the container, providing an expandable and moveable seal for the open end to cover and contain the fluid, said seal responding to one of the expansion and contraction of the fluid so as to compensate for pressure in a headspace of the container under the seal following sealing of the container, by moving downwardly towards the base and within the neck finish, wherein said seal is selected from the group of a flexible material housing with an expandable side wall, a flexible material housing with an expandable side wall which has a concertina construction, and a flexible balloon structure which is able to expand within the neck finish."

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or moving downwardly towards the base and within the neck finish, wherein said seal is selected from the group of a flexible material housing with an expandable side wall, a flexible material housing with an expandable side wall which has a concertina construction, and a flexible balloon structure which is able to expand within the neck finish. *Boyd* is neither flexible or moves when the closure is sealed, and *Itzel* has no side wall that relieves pressure. Clearly claim 21 is patentable over the references.

This Response is filed concurrently with a Third Information Disclosure Statement.

Reconsideration of the application and claims in view of the foregoing amendments and remarks is respectfully requested. Early notice of allowance thereof is earnestly solicited.

Applicants respectfully request the courtesy of a telephone interview to discuss the claims.

Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

Dated: August 17, 2009

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